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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,623	03/16/2004	Chuang Chun Chiueh	CHIU3036/EM	9675

23364 7590 09/29/2010
BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314-1176

EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

MAIL DATE	DELIVERY MODE
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09/29/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,623	Applicant(s) CHIUEH, CHUANG CHUN	
	Examiner DEBBIE K. WARE	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/1/10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/16/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 14-17 and 19-24 are presented for examination on the merits.

Response to Amendment

The amendment filed July 1, 2010, has been received and entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 14-17 and 19-24 are rejected under 35 U.S.C. 102(a) as being anticipated by newly cited Kim (US 2002/0160504), cited on enclosed PTO-892 Form.

Claims are drawn to method for culturing organic blue-green algae comprising obtaining a culture medium comprising high-nitrogen organic substance free of inorganic salts, obtaining algae, and inoculating the algae on the medium and culturing the algae in an organic environment.

Kim teaches method for culturing organic blue-green algae comprising obtaining a culture medium comprising high-nitrogen organic substance free of inorganic salts, obtaining algae, and inoculating the algae on the medium and culturing the algae in an organic environment, note column 1, at page 2, lines 1-5 of [0023]. The culture is free of carbonate or hydrogen carbonate. The culture also can comprise edible microbes such as *Anabaena* species. Furthermore, other microorganisms are included such as *Rhodopseudomonas* species and the high organic matter is rich in protein and nutrients.

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See [0031], all lines, animal blood plasma and food as well as excretion wastes. The mixture is subjected to aeration and agitation to provide for an optimum pH greater than 8.0, page 5, [0069], lines 2-4. Also note [0072], lines 1-20. The specific addition of inorganic salts is not disclosed.

The claims are identical to the cited disclosure and are, therefore considered to be anticipated by the teachings therein.

Response to Arguments

Applicant's arguments filed July 1, 2010, have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., human edible algae) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification (Applicants' specification at page 2, page 3, lines 2-3, etc.), limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the blue-green algae culturing process of Kim produces crops which are edible. Therefore, the algae are considered to be intrinsically edible because they are not toxic to humans as explicitly disclosed by Kim. The presence of calcium and minerals in the crops is not relevant to the claimed method because the claims do not omit the presence of minerals and calcium per se. The claim 14 only omits the presence of inorganic salts in the medium and Kim does not utilize inorganic salts.

Further, Kim teaches that culturing in the culture medium is in an organic environment free of inorganic additives, of which the soil to which the culturing medium

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of Kim is added to is an organic environment free of additives. Therefore, the culturing of Kim takes place in an organic environment. Applicants' claims do not require the algae to be edible or that the algae are to be human edible glue-green algae. It is noted that claims 16 and 23 recite the culture medium further comprises edible microorganisms, however, this is not a recitation which requires the algae to be edible to humans. Also the argument that the culturing takes place without the existence of any inorganic substances is noted, however, this is not the language used in the claims.

The instantly filed claims read only upon a very broad culturing process for blue-green algae of which the culture medium is free of inorganic salts and Kim does not teach the presence of inorganic salts in the culture medium and the claims are directed to a culture medium comprising a high-nitrogen organic substance of which is disclosed by Kim. The argument that the claims are directed to a culture medium which does not require inorganic additives is noted, however, it is the organic environment which is described by the claims to be free of inorganic additives. The culturing step of claim 14 reads on culturing the algae in a culture medium free of inorganic salts but not a culture medium which is also free of inorganic additives nor do the claims read upon human edible algae. The arguments are not persuasive and the rejection is sustained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the previously enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining newly cited references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE K. WARE whose telephone number is (571)272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deborah K. Ware/
Deborah K. Ware
Primary Examiner
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